

73.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of the Application of----- )

HAWAIIAN ELECTRIC COMPANY, INC. )

Docket No. 2006-0386

For Approval of Rate Increases and Revised )  
Rate Schedules and Rules )  
\_\_\_\_\_ )

AMENDED PROTECTIVE ORDER NO. 23378

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES  
COMMISSION

2007 MAY 23 P 3:38

FILED

Filed \_\_\_\_\_

At \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of the Application of-----	)	
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HAWAIIAN ELECTRIC COMPANY, INC.	)	Docket No. 2006-0386
	)	
For Approval of Rate Increases and Revised	)	
Rate Schedules and Rules	)	
_____	)	

**STIPULATION FOR PROTECTIVE ORDER**

WHEREAS, Hawaiian Electric Company, Inc. ("HECO" or "Applicant") filed an application on December 22, 2006, for approval of rate increases and revised rate schedules and rules;

WHEREAS, the Applicant maintains that certain information is confidential and proprietary and such information may include information considered confidential by a third party or otherwise subject to a confidentiality clause with Applicant;

WHEREAS, the Applicant maintains that disclosure of certain confidential information could work to its competitive disadvantage if other parties have access to that information;

WHEREAS, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") is, ex officio, a party to this proceeding pursuant to the Rules of Practice and Procedure before the Public Utilities Commission (the "Commission");

WHEREAS, the Department of the Navy, on behalf of the Department of

Defense ("DOD") was made a party to this proceeding pursuant to Order No. 23366, filed April 13, 2007;

WHEREAS, HECO, DOD, and the Consumer Advocate are aware that certain confidential information has been requested by the DOD and Consumer Advocate and additional confidential information may be requested in the course of discovery in this proceeding;

WHEREAS, the DOD and Consumer Advocate deem the information requested during the course of discovery to be necessary to create a complete record in this proceeding;

WHEREAS, Applicant is willing to disclose certain confidential information only to the DOD, Consumer Advocate and the Commission, so long as the information is protected from further disclosure;

WHEREAS, in order to assess the merits of the approvals sought by Applicant, as well as to determine its involvement in this proceeding, the DOD and Consumer Advocate must have access to the information alleged to be confidential;

WHEREAS, Applicant, DOD, and the Consumer Advocate (collectively "the parties") desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which a party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera;

NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information identified in the course of the proceeding in connection with the Application, as follows:

**TERMS OF THE ORDER**

1. This protective order governs the classification, acquisition, and use of confidential information produced by any party in this docket.

2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission. If the Commission designates a person as a qualified person pursuant to paragraph 12.g. below, that person shall comply with the provisions of this protective order, including executing a Protective Agreement.

**APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT**

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in Haw. Rev. Stat. §92F-3, the provisions of Haw. Rev. Stat. Ch. 92F (Uniform Information Practices Act or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

**CLASSIFICATION**

4. Any party may designate as confidential any information it believes, in

good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, or nonpublic information, "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or information that is related to the security of the Applicant's facilities, that if disclosed publicly, could increase risk to the Applicant's facilities, jeopardize their emergency and disaster preparedness plans, and/or adversely impact its ability to respond to potential terrorist threats. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the other parties. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party to this docket challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. Any challenge

to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or the parties, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission and the other parties when information provided orally or in other than written form includes confidential information. At the time of such notification, a party shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

#### **FORMS OF CONFIDENTIAL INFORMATION**

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

#### **DESIGNATION**

8. Any party claiming that information is confidential shall place upon all applicable material the following legend:

#### **CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER**

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable,

limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the party claiming confidentiality, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or impermissible disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above. The protections conferred herein shall apply to any confidential information voluntarily produced prior to the issuance of this protective order, provided that following the issuance of this protective order (1) the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information, and (2) the party claiming confidentiality ensures that the confidential information voluntarily produced prior to the issuance of this protective order contains the designation as required in paragraph 9

above.

### **DISCLOSURE**

11. Except as provided in paragraph 13 below, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person," as used in this protective order, means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Commission for this proceeding;
- c. The Consumer Advocate, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for this proceeding;
- d. Applicant, its officers and employees, its counsel (including employees directly employed by such counsel), and any consultants retained by Applicant for this proceeding;
- e. DOD, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by DOD for this proceeding;
- f. Any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any



consultants retained by it for this proceeding, to the extent allowed by the Commission;

g. Any other person approved by the party asserting the claim of confidentiality; and

h.. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

#### **PROCEDURE FOR OBTAINING ACCESS**

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

#### **USE OF CONFIDENTIAL INFORMATION**

15. Any confidential information obtained under this protective order shall be

used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, or (c) the UIPA (in the case of any "agency" as defined in Haw. Rev. Stat. §92F-3), including any ruling of the Office of Information Practices.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff in any proceeding pending before the Commission involving the producing party or its affiliates or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party or its affiliates, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or

until further order of the Commission.

Any confidential information obtained under this protective order may be used by the DOD, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party or its affiliates, or where the intended use of such confidential information is for the purpose of assisting the DOD in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, the page(s) or portions of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left hand corner:

**Confidential Information  
Deleted Pursuant To  
Amended Protective Order No. 23378**

**RETENTION OF CONFIDENTIAL INFORMATION**

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to

and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO  
AMENDED PROTECTIVE ORDER NO. 23378 AND  
CONTAINS DOCUMENTS WITH CONFIDENTIAL  
INFORMATION. IT IS NOT TO BE OPENED OR  
THE CONTENTS OF THIS ENVELOPE  
DISPLAYED OR REVEALED EXCEPT TO  
QUALIFIED PERSONS AUTHORIZED TO  
INSPECT THE ENCLOSED DOCUMENTS.**

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

#### **DURATION OF CONFIDENTIALITY**

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

#### **APPEAL TO THE COMMISSION**

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first

make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

#### **NONWAIVER OF OBJECTIONS AND RIGHTS**

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

#### **MODIFICATION OF THE PROTECTIVE ORDER**

27. The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the Parties and an opportunity for hearing, or if modified by the Parties in a written stipulation and approved by the Commission.

#### **DISPOSAL OF CONFIDENTIAL INFORMATION**

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing,

summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate, and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives, and may remain in the possession of DOD and its counsel for the same period of time.

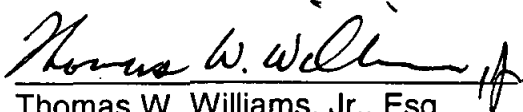
### **SANCTIONS**

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

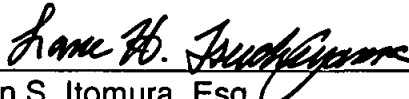
FACSIMILE/COUNTERPARTS/SIGNATURE

32. This Stipulation for Protective Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulation for Protective Order by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

DATED: Honolulu, Hawaii, May 23, 2007.



Thomas W. Williams, Jr., Esq.  
Peter Y. Kikuta, Esq.  
Attorneys for  
Hawaiian Electric Company, Inc.



Jon S. Itomura, Esq.  
Lane H. Tsuchiyama, Esq.  
Attorneys for  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs

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Randall Y.K. Young  
Associate Counsel  
NAVFAC PACIFIC  
Attorney for Department of the Navy  
on behalf of the Department of Defense

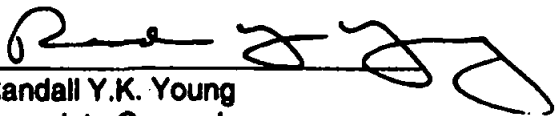
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DATED: Honolulu, Hawaii, May 23, 2007.

\_\_\_\_\_  
Thomas W. Williams, Jr., Esq.  
Peter Y. Kikuta, Esq.  
Attorneys for  
Hawaiian Electric Company, Inc.

\_\_\_\_\_  
Jon S. Itomura, Esq.  
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Attorneys for  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs

  
\_\_\_\_\_  
Randall Y.K. Young  
Associate Counsel  
NAVFAC PACIFIC  
Attorney for Department of the Navy  
on behalf of the Department of Defense



APPROVED AND SO ORDERED THIS \_\_\_\_\_.

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF HAWAII

By \_\_\_\_\_  
Carlito P. Caliboso, Chairman

By \_\_\_\_\_  
John E. Cole, Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Kaiulani Kidani Shinsato  
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, \_\_\_\_\_, have been presented with a copy of Amended Protective Order No. 23378, issued by the Public Utilities Commission in Docket No. 2006-0386 on the \_\_\_\_\_ day of \_\_\_\_\_, 2007 ("Protective Order").

2. I am employed, retained or assisting \_\_\_\_\_ in Docket No. 2006-0386, am a "Qualified Person" pursuant to Paragraph 12 of the Protective Order, and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist \_\_\_\_\_ as provided for in paragraph 15 of the Protective Order (and paragraph 17 in the case of rendering assistance to the Consumer Advocate), and that I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person unless otherwise permitted by the Protective Order.

4. I further understand that at the conclusion of my assistance to \_\_\_\_\_, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to \_\_\_\_\_, and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address

( ) \_\_\_\_\_  
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Amended Protective Order No. 23378 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

Division of Consumer Advocacy  
Department of Commerce and Consumer  
Affairs  
335 Merchant Street, Room 326  
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EFACHES  
Utility Rates and Studies Office  
1322 Patterson Avenue, S.E.  
Building 33, Floor 3, Room/Cube 33-3002  
Washington, D.C. 20374

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DATED: \_\_\_\_\_